

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL WEINIK, D.O.,

Plaintiff,

No. 2:19-cv-03503-MSG

V.

TEMPLE UNIVERSITY OF THE
COMMONWEALTH SYSTEM OF
HIGHER EDUCATION, TEMPLE
UNIVERSITY'S LEWIS KATZ
SCHOOL OF MEDICINE, TEMPLE
UNIVERSITY HOSPITAL, SHIVANI
DUA, and PHILLIP ACEVEDO,

Defendants.

**RESPONSE TO COURT’S FEBRUARY 6, 2023 ORDER REGARDING PLAINTIFF’S
MOTION TO SUBSTITUTE**

Dr. Phillip Acevedo's parents would be prejudiced by being added to the litigation at this juncture because all discovery was conducted without their involvement and with no counsel. When a party dies during litigation, his counsel ceases to represent him. See Giles v. Campbell, 698 F.3d 153, 158 (3d. Cir. 2012). Dr. Acevedo's parents were not able to attempt to take depositions that may have assisted in the defense of the estate, including of five fellow residents and physicians. Defendants, Temple University of the Commonwealth System of Higher Education, Temple University's Lewis Katz School of Medicine, and Temple University Hospital (collectively, the "Temple Defendants"), did not seek the depositions of certain former physicians because those depositions are not needed for their defense. Unless discovery is extended, Frank and Margaret Acevedo as the representatives of the estate of Dr. Phillip Acevedo would be prejudiced.

Although defamation claims were made against Dr. Acevedo and the Temple Defendants, the facts and law relevant to defeat the claims is unique to each defendant. For instance, while all defendants have defenses under the Health Care Quality Improvement Act (HCQIA), the analysis regarding whether the Temple Defendants have immunity is different from the applicable analysis for Dr. Acevedo. See 42 U.S.C. § 11111(a)(1),(2). The inquiry for Dr. Acevedo is whether the information he provided was “false” and, if so, whether he “knew” it. See 42 U.S.C. § 11111(a)(2). Dr. Acevedo’s estate is hampered in putting forth a defense without his testimony, and therefore it is necessary to seek information from those who knew and worked with him and Plaintiff. The Temple Defendants have an immunity defense under HCQIA if Plaintiff’s peer review met certain factors identified in 42 U.S.C. § 11112 pertaining to the reasonableness of the related investigation and process. See 42 U.S.C. § 11111(a)(1). Accordingly, the discovery taken to date focused on what Temple administrators and investigators knew about Plaintiff’s peer review process – not the observations of physicians who worked with both Dr. Acevedo and Plaintiff.

For the foregoing reasons, the Temple Defendants respectfully request that Plaintiff’s Motion to Substitute be denied. Alternatively, the Temple Defendants respectfully ask that this Court extend discovery by 90 days to permit additional discovery related to Dr. Acevedo.

Respectfully submitted,

TUCKER LAW GROUP, LLC

Date: February 20, 2023

/s/ Jessica A. Rickabaugh
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Attorneys for the Temple Defendants

CERTIFICATE OF SERVICE

I, Jessica Rickabaugh, Esquire certify that on this date, I caused a copy of the foregoing document to be electronically filed through the Court's ECF System and that a notice of electronic filing will be generated to the following counsel of record, thereby constituting service of the document:

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Date: February 20, 2023

/s/ Jessica Rickabaugh
Jessica Rickabaugh, Esquire